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June 8, 2012

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

**Re: Notification of Ex Parte Presentation of Anda, Inc., Regarding Petition for Declaratory Ruling to Clarify That 47 U.S.C. § 227(b) Was Not the Statutory Basis for Commission's Rule Requiring an Opt-Out Notice for Fax Advertisements Sent with Recipient's Prior Express Consent, CG Docket No. 05-338 (filed Nov. 30, 2010)**

Dear Ms. Dortch:

On June 7, 2012, the undersigned and Matthew Murchison, both of Latham & Watkins LLP, met on behalf of Anda, Inc. ("Anda"), with Priscilla Delgado Argeris and Joseph Cavender of the Office of Commissioner Jessica Rosenworcel, in connection with Anda's Petition for Declaratory Ruling and Application for Review in the above-mentioned docket.

At this meeting, we discussed the uncertain legal basis for Section 64.1200(a)(3)(iv) of the Commission's rules, which requires that commercial faxes sent with the prior express consent of the recipient must contain the same opt-out notice that appears on unsolicited fax advertisements. We noted that Anda had filed a Petition for Declaratory Ruling 19 months ago asking the Commission to identify the rule's statutory basis, but that the Commission's Consumer and Governmental Affairs Bureau recently issued an Order summarily dismissing the Petition.<sup>1</sup> We pointed out that the Bureau did so without seeking public comment, without resolving the substantive issues raised in the Petition, and in a manner that prevents Anda from seeking judicial review.

We urged the Commission to act quickly on Anda's pending Application for Review of that Order, and to clarify that Section 227(b) of the Communications Act, which governs only

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<sup>1</sup> See *Junk Fax Prevention Act; Petition for Declaratory Ruling to Clarify That 47 U.S.C. § 227(b) Was Not the Statutory Basis for Commission's Rule Requiring an Opt-Out Notice for Fax Advertisements Sent with Recipient's Prior Express Consent*, CG Docket No. 05-338, Order, DA 12-697 (CGB rel. May 2, 2012).

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unsolicited faxes, was not the statutory basis for the rule in question. We explained that if the Commission does not clarify that Section 64.1200(a)(3)(iv) was adopted pursuant to authority other than Section 227(b), class action lawsuits alleging technical violations of that provision will continue to threaten legitimate businesses with massive unwarranted liability based solely on consensual communications with their customers.

Please contact the undersigned if you have any questions regarding these issues.

Sincerely,

/s/ Matthew A. Brill

Matthew A. Brill  
*Counsel for Anda, Inc.*